IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 2158 of 2005(F)

OPMV.456/2001 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM

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PETITIONER:

ABDUL JAMAL, S/O.ABU HAJI, AGED 44,
CHERIYADAM HOUSE, EDATHANATTU KARA, MANNARKKAD
TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENTS:

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1. ABDUL RASHID.K. S/O.SOOPY,A GE 23 YEARS,
KOTTARAYIL HOUSE, 159 ALANALLUR, MANNARKKAD TALUK,
PALAKKAD DISTRICT.

2. SUBAIR.P. S/O.KUNJU MOHAMMED,
AGED33 YEARS, PILATHODIKA HOUSE,
CHUNGATHARA AMSOM DESOM, CHUNGATHARA VILLAGE,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

3. THE NEW INDIA ASSRANCE COMPANY LTD.,
BRANCH OFFICE, CATHOLIC CENTRE,
UP HILL, MALAPPURAM 676 505.

BY ADV. SRI.H.SIVARAMAN
SRI.K.K.BALAKRISHNAN
SMT.A.S.SUVITHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS :

EXT.P1 : A TRUE COPY OF THE AWARD OF THE MACT OTTAPALAM DT. 9.7.2003 IN OP(MV) NO.456/01.

EXT.P2 : TRUE COPY OF THE IA 4519/03 IN OP(MV) NO.456/01.

EXT.P3 : TRUE COPY OF THE ORDER DT. 8.3.2004 IN OP(MV) NO.456/01.

TGS

KURIAN JOSEPH J.

W.P.(C) No.2158 of 2005

Dated 9th August, 2007.

J U D G M E N T

Petitioner is aggrieved by Ext.P3 order passed by the Motor Accidents Claims Tribunal, Ottappalam in O.P.(MV) No.456/01, whereby the application for condonation of delay for setting aside the ex parte award was dismissed. Petitioner is the second respondent in the claim petition, who is alleged to be the owner. According to the petitioner, he had not received the summons. He came to know of the award only when coercive steps were taken for recovery. The Tribunal in the impugned order has observed that "After amendment of CPC there is time limit to appear and file written statement. Even the court is not permitted to grant time beyond that prescribed. Thus a person who is not appearing at all will not be in a better position than a person who appeared before the court on summons". I am afraid, that reasoning cannot be appreciated. The question of time limit arises only when there was due service of notice. This is a case where the petitioner had not appeared before the Tribunal and therefore, there is no question of any time limit. I set aside

Ext.P3. In the facts and circumstances of the case, I am of the view that in the interests of justice, an opportunity is to be given to the petitioner to contest the matter on merits. Accordingly, the application for condonation of delay and the application for setting aside the ex parte award are allowed. The petitioner will file the written statement within one month from today. Thereafter, the Tribunal shall dispose of the matter in accordance with law, expeditiously.

KURIAN JOSEPH, JUDGE.

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